

Powerful Pawns of the Kashmir Conflict: Kashmiri Pandit Migrants

*Mallika Kaur Sarkaria**

University of California, Berkeley School of Law

Tens of thousands Kashmiri Pandits (the Hindus of Kashmir) left the Kashmir Valley during the Kashmiri Independence movement of 1989-1990. This migration has been fervently debated by all sides ever since. The voices of Pandit advocacy organizations have gained prominence and often serve to create a narrative that forwards the Indian government's interests: painting the conflict in Kashmir as one of Muslim desire for communal hegemony versus the Indian state's secularism and democracy. This paper focuses specifically on the claims for reparations for Pandit-owned properties that remain in the Valley. The international community has increasingly recognized and respected the right to reparations for property lost during times of conflict. This paper argues for a nuanced understanding of the political and social situation within which property claims of the Pandits arise and may be resolved. Given the particular context of the Pandit displacement, the paper calls for a property reparations plan that is in fact conditioned on return migration. Such a plan is both likely to result in a meaningful solution to the problem of displaced Pandits and to compel the Indian government to work towards improving the living conditions of all communities in Kashmir

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(rather than coloring the conflict merely as communal and focusing all efforts on neutralizing Kashmiri Muslim calls for increased autonomy). Despite their weakened position as a displaced people, the Pandits are also paradoxically a powerful community, whose fate will likely have important repercussions for all Kashmiris.

Introduction

Kashmir has been the source of conflict between India and Pakistan ever since the British decolonization of the sub-continent in 1947. This conflict is most often colored as communal Hindu-Muslim animosity. When the India-Pakistan partition took place in August 1947, the large princely state of Kashmir, contiguous to both dominions, remained unaligned to either territory. Then, on 27 October 1947, in the face of a peasant revolt and growing communal tensions in the sub-continent, the Hindu Maharaja of Kashmir acceded his majority Muslim state to India rather than the new Muslim state of Pakistan. The accession was conditioned on a future plebiscite to determine the fate of Kashmir, once normal conditions were restored. The accession marked the beginning of the first India-Pakistan war over Kashmir. The United Nations (UN) has since several times called for the promised plebiscite to settle Kashmir's right to self-determination and India and Pakistan accuse each for not meeting the UN prerequisites of plebiscite (Bose, 2005:40). The countries have fought three other wars over the territory. A 1971 ceasefire line through Kashmir serves as a de facto border between the current Indian-administered Kashmir and Pakistan-administered Kashmir. The Indian-administered portion is significantly larger and consists of three regions: the Kashmir Valley, Jammu, and the hilly region of Ladakh.

In 1989-1990, the conflict entered a new phase, when a ground-swell movement for Kashmiri Independence challenged the Indian government's control over the Kashmir Valley. In 1987, a widely discussed rigged election marked the culmination of Kashmiris' growing disenchantment with the Indian government. By 1989, there was widespread resistance to the government's control over the Valley, and strong, armed militant movements mobilized in the Kashmir Valley. This was met by stronger resistance from the Indian State, particularly in the form of heavy military deployment. Kashmir remains one of the most highly militarized regions in the world today (Project Ploughshares, 2008; Internal Displacement Monitoring Center, 2007). An estimated 60,000 people have died and 8,000 are 'missing' (almost all of these being Kashmiri Muslims) since the uprising in 1989-1990.

It is widely held that the majority of Kashmiri Muslims supported the Kashmiri Independence movement; that the government machinery of Kashmir was initially ineffective in the face of this uprising; and that tens of thousands of Kashmiri Pandits (the Hindus from Kashmir, who constitute a unique religious and cultural minority) migrated from the Valley. The statements of the facts that surround this Kashmiri Pandit migration do not converge on much else. Since 1990, Pandit migration has been a fervently debated and deeply sensitive issue on all sides. Pandits have been more vocal and organized than other internally displaced populations in India. Yet, as this paper illustrates, the prominent Pandit advocacy organizations and activists might not in fact represent those most affected or those who continue to desire to return to the Kashmir Valley. The vocal Pandit organizations have come to illustrate and strengthen the Indian Government's claims that the separatist movement in Kashmir is less about regional autonomy and more about Muslim violence against other Indian communities, aimed at achieving Muslim hegemony at the cost of Indian democracy and secularism. The fact that Pandits represent the majority Hindu religion of India is also of consequence. This community's recent past has been used to contribute to a rhetoric of Indian nationalism, one pitted strongly against the movement for autonomy in Kashmir. This paper investigates the specific issue of Pandit-owned properties that remain in the Valley and the claims to reparations for the same.

The right to post-conflict property reparations¹ has gained international consensus in the past few decades. Since loss of property is a tangible measure of dislocation, the restitution of property can become a concrete step towards healing and repatriation. Though not a complete solution, property reparations are an essential step in alleviating suffering, reestablishing security, and enabling successful return of displaced communities, all suitable goals for the conflict-torn Kashmir Valley. Property reparations are intrinsically tied to displaced persons' return. This paper suggests that the Pandit situation provides an example where reparations for lost property should be *conditioned* on return. This suggestion is in light of the fact that return of Pandits to the Valley will nudge the Indian government to address overall conditions in the Valley, preventing it from coloring the conflict as merely communal and from focusing all efforts on neutralizing Kashmiri Muslim calls for increased autonomy.

This paper points out the political and historical cobwebs around the Pandit migration, which complicate the application of international norma-

¹ Property Reparations can take the form of return of the original property (restitution) or payment of the value of the property (compensation).

tive standards on property reparations to this situation. The very reasons for the Pandit migration are debated. While these reasons do not change the reality that tens of thousands of Pandits are internally displaced, they do call into question the actual inaccessibility of Pandit properties and the necessity of a formal restitution and/or compensation process. The question of the possibility of Pandit return in 2009 is perhaps as contested as that of their migration in 1989-1990; only the former has been assessed in even lesser detail. But based on the information available, this paper suggests that reparations for Pandit properties should not be made solely on the basis of whether a Pandit migrated from the Kashmir Valley. This recommendation is made in light of the unique context of the Pandit situation. First, return is at least arguably possible. During the 20 years of conflict, some Pandits never migrated while others have returned to the Valley either for temporary visits or permanent resettlement. Second, a policy striving towards return is favorable for the long-term stability of the region. It will force the Indian politicians to cease employing Pandit displacement as political currency against the militancy (and Pakistan for supporting the Muslim militants) and rather to work towards improving living conditions in the Valley for both Kashmiri Muslims and Pandits. Merely providing compensation without requiring return will only continue to fuel communal discord—on the one hand, it will appear as ensuring the minority's permanent removal from the Valley, while on the other it will be seen as unfair to the Kashmiri Muslims who have endured destruction of their way of life for over 20 years.

Formulating a reparations plan based on return requires assessing whether Pandits truly want to return, weighing their security concerns, and conducting unbiased monitoring. This paper suggests that the different vested political interests in the Pandits' future have shadowed most accounts available, necessitating new ground work. An international agency could undertake this research, but will require the Indian government's cooperation. A careful survey of the rural Pandit population (segments of which have shown willingness to return in the recent past) as well as of Kashmiri Muslims, should be conducted to discern what the common people, rather than political stakeholders, desire. Should the survey show promising results, a pilot program can be launched to test security conditions and ease the return of Pandits. Such measures are long overdue. Pandits should no longer be used as pawns in forwarding agendas that only instigate communal discord in a region already plagued by conflict.

It is acknowledged at the very outset that this paper by no means presents *the* complete picture. However, after interviewing Kashmiri Pandits and Muslims, collecting existing documentation and synthesizing media reports, this paper approaches the issue of Pandit migration with an eye

towards what the future holds for the Pandits and what role the Pandits' future plays in the Kashmir conflict. Despite their weakened position as a displaced people, the Kashmiri Pandits are also paradoxically a powerful community, whose fate will likely have important repercussions for Kashmir.

Methodology

The primary data collected for the study came from interviews with 16 Kashmiris: 12 Pandits and four Muslims. All interviews were conducted via phone and/or e-mail. Interviews were in English language, except for certain Urdu phrases employed by interviewees during phone interviews. Most interviews consisted of multiple short e-mails, in light of the sensitive nature of the material and also in order to provide respondents sufficient time to recollect thoughts and discuss their recollections with family and community members.

The data collection began in March 2007, as I first began reading about claims to Pandit properties, and it ended in January 2009. The interviews were conducted by telephone and e-mail. The selection of interviewees was through a social network, which began with Professor Buxbaum at Berkeley Law putting me in touch with Kashmiri Muslim lawyer, Mujtaba Hussain. Thus, the resulting interviewee pool was neither random nor representative.

At the time of the interviews, three of the Pandit interviewees had resided in the United States for the past several years; four resided in New Delhi; two in Jammu; and two remained in the Kashmir Valley. All Muslim interviewees continued to live in the Valley. Three Pandit interviewees and one Muslim interviewee eventually withheld permission to be quoted or named in the paper. The real names of the remaining 12 are used with their permission.

The eight Pandit interviewees were: Maharaj Kaul, Naveen Zalpuri, Bansi Lal, K.N. Pandita, Jatinder Bakshi, Rekha Chowdhary, Inder Salim and Sanjay Tickoo. Mr. Kaul, Mr. Zalpuri and Mr. Lal have all resided in the United States for the past several years. Most of these interviews were conducted via e-mail between March and April 2007. Professor Pandita is a retired professor, active member of the Kashmiri Pandit organization Panun Kashmir, continues to live in Jammu and Kashmir (J&K), and was also interviewed via e-mails. Jatinder Bakshi, who runs the NGO *Action Committee For Return of Migrants* in J&K, was interviewed via phone and e-mails. Rekha Chowdhary is a Professor of Political Science at the University of Jammu, and was also interviewed via e-mails (concluding January 2009). Inder Salim a migrant, an artist and now resident of New Delhi,

responded to a series of emails (concluding in January 2009). Sanjay Tickoo is a Pandit who never migrated from the Valley and is currently actively involved with *Kashmiri Pandit Sangarsh Samiti* (KPSS), an organization committed to recording and improving the lives of Pandits who remain in the Valley. He was interviewed via phone and email (concluding January 2009).

More than three dozen Pandit leaders, activists and writers were contacted during the course of this research, but only 12 agreed to formal interviews, and of these the eight mentioned above granted permission to be cited.

The three Kashmiri Muslims interviewees who gave permission to be cited were: Taffazzul Hussain, Mehbooba Mufti and S.T. Hussain. Mr. Hussain is a retired Kashmiri Muslim professor, who has continued to care for his Pandit neighbor's home since they migrated in 1989-1990. He responded to a series of questions via e-mails (concluding 22 April 2007). The Kashmiri politician, Ms. Mufti, currently President of the People's Democratic Party (PDP), was interviewed in two phone interview sessions (15 August 2007 and 18 August 2007). Advocate S.T. Hussain provided valuable information by sharing legal documents and insight over phone, via e-mail and via regular mail (concluding 23 August 2007).

All migrant Pandit interviewees initially received a questionnaire via e-mail consisting of twenty-five (25) questions. These questions can be divided into the following six categories: (1) the interviewee's personal history in the Valley; (2) interviewee's perception of the cause and level of instability during the 1989-1990 uprising; (3) details of migration including whether interviewee received assistance, governmental or otherwise; (4) interviewee's perception of what happened to other Pandits; (5) interviewee's experience, if any, in attempting to recover lost property; and (6) interviewee's current level of activism and influence in the migrant Pandit community.

A note of caution: again, it should be noted that the Pandit interviewee pool is in no way a representative sample and of course should not be thought to suggest that the Pandit community is a homogenous monolith. These interviewees are educated, upper-class Pandits who were land- and home-owners in the Valley. Given the limitations of this study, no rural or lower-class Pandits could be interviewed. While the non-representation reflected in these interviews is significant, it is not limited to the current research and is instructive. As will be explored in the following sections, the interviewees above represent the privileged segment of the Pandit population that in fact most often speaks for the larger community. This very feature of Pandit leadership and advocacy, this paper will argue, further complicates the question of the Pandits' future.

Property Reparations and Collective Recovery

Post World War II, and particularly in the last twenty years, the international community has displayed increased attention to the worldwide phenomenon of internal displacement and the growing belief that reparations for property can incentivize the recovery of communities, quell deep-seeded communal conflicts, and provide hope for durable solutions.

Until as recently as the mid-1990s, the preferred solution for victims of displacement was resettlement in other countries as refugees (Rosand, 1998). The 1998 United Nations (UN) Guiding Principles on Internal Displacement provided the seminal document on the internationally recognized rights of internally displaced persons. While these Principles are not legally binding, they draw from binding sources of international law and have been widely accepted as the international guidepost for assessing internal displacement issues (Entwistle, 2005).

The UN Principles define Internally Displaced Persons (IDPs) as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border” (Principle 2). They state that all property left behind by IDPs should be protected against destruction and illegal appropriation, occupation, or use (Principle 21 (3)). The UN Principles point out the duty of states to assist IDPs in recovering “the property and possessions which they left behind,” or, if such recovery is not possible, to provide “compensation or another just reparation” (Principle 29(2)). The states are also expected to “grant and facilitate” access for international organizations that can assist in the return, resettlement and reintegration of IDPs (Principle 30). The UN Principles provide general guidelines but do not address the intricacies of property restitutions and return, such as the issue of secondary occupants (persons who take up residence in a home or land after the legitimate owners or users have fled), which are pertinent to many situations including the one in question.

A more recent set of guidelines, the “Pinheiro Principles” of 2005, strive to address certain issues specific to property restitution and compensation, which the UN Guiding Principles do not. Regarding secondary occupants, the Principles declare that such occupants should be protected from “arbitrary or unlawful” eviction through safeguards of due process (Principle 17.1). Next, the Principles state that secondary occupants should receive alternative housing and/or land in cases where their evictions are “justifi-

able and unavoidable" (Principle 17.3). However, the Principles also consistently maintain that protecting secondary occupants should not unnecessarily delay the implementation and enforcement of property reparations.

In international cognizance, the large-scale property restitution process after the 1992-1995 ethnic conflict in Bosnia and Herzegovina has become the leading model for successfully creating and executing a property reparations scheme. Attempted "ethnic cleansing" was a primary feature of the war in Bosnia, pursued most stringently by the Serbs and Croats against the Muslim Bosniaks, though atrocities were committed by all sides (Williams, 2007:33). The international Dayton Peace Accord that ended the war also mandated extensive property restitutions. It prioritized, though not required, actual return of beneficiaries to their original homes, in an effort to reverse the ethnic cleansing efforts (Williams, 2007:35). Closely monitored by the international community, the restitution process in 1998 consisted of a tight administrative process. After several seemingly deathly hiccups, including political resistance and ethnic tensions, the process gained momentum in 2000. In 2001 the 'return requirement' was revoked, in the face of significant security concerns for returnees (William, 2007:39). By 2004, more than 200,000 properties had been returned to those displaced during the conflict. One million refugees eventually returned home (Williams, 2005). The next challenge for the international community was smoothly transitioning the process to local authorities. "Significant international programming has continued in areas affecting return, such as reform of the economy, the educational system, and the judiciary" (Williams, 2007:41). The role played by the international community in the conception, implementation and completion of the Bosnian reparations process makes this case unique and "the applicability of this model to other post-conflict situations is debatable" (Hurwitz, Studdard and Williams, 2005).

Earlier in the 20th century, property reparations prominently featured in revival plans of Eastern European post-communist nations (Barkan, 2000:112). "It was up to the new regimes to organize their national economies within new legal and moral frames. None was either willing or able to revisit seriously the crimes and injustices of the old regime; instead all settled for limited restitution that had to satisfy the moral cravings" (Barkan, 2000: 114). Restitutions in these cases were often justified as economically beneficial for the state seeking to enter the market economy of the international community, rather than as necessary redress for individual victims. For example, the Czech Republic made particularly extensive restitution laws, with the "Small Restitution Law" of 1990 and the "Large Restitution Laws" and "Federal Land Law" of 1991. The laws addressed primary versus secondary owners (protecting the latter by entitling primary owners to either restitution or compensation depending on the secondary ownership

status of the property); protected rights of tenants living in restituted building; as well as created alternatives to in-kind restitutions for public use properties as well as those destroyed (Williams, 2007:17). At the same time, the two 1991 laws restricted restitutions back to only 1948, and to only citizens and permanent residents. These parameters excluded groups that had been affected pre-1948 as well as expatriate victims of communist confiscations (Williams, 2007:17). They thus selectively favored certain claimants and excluded others. For example, after some amendments to the law, "Jewish victims of Nazi confiscations are provided restitutions by the Czech state, while Sudeten Germans [ethnic German minority expelled post World War II] victims of Czech confiscation are not." Similarly, the condition of return was arbitrarily applied: while the expatriates are not restituted due to their unwillingness to return, the Sudeten Germans are excluded despite their stated willingness to return (Williams, 2007:23).

South Africa presents another case where property reparations have been employed for political transition and re-building of national identity. In apartheid South Africa, over 3.5 million non-white South Africans had been displaced from their homes and lands). Laws adopted under Nelson Mandela's post-apartheid government were broad and sweeping and aimed at addressing race-based displacement as far back as 1913 (Williams, 2007:24, 26). They thus aimed at correcting for intergenerational racial segregation and increasing racial mixing in land ownership. The restitution efforts became part of the government's broader land reform agenda, and the focus of both became increasing the proportion of black ownership of land. Beneficiaries chose compensation rather than return followed by in-kind restitution, upsetting government plans. The government stressed return while assuming that "most of the landless wish to return to the lands," while a 2004 survey found that "'most blacks regard jobs in urban areas as overwhelmingly more important priorities than rural land'" (Williams, 2007:31-32). Inefficiencies in the over-burdened land administrative system further frustrated this process (Williams, 2007:32).

Guatemala shows a deeper disappointment and even failure of the promise of property reparations, mostly because the worst affected victims did not end up with political power post-conflict. The rebel-military conflict resulted in as many as 2.5 million Guatemalans being displaced from their homes, one million as IDPs (Williams, 2007:42). However, after the signing of peace accords, extreme poverty persisted. The victims had been promised property reparations but these promises did not come close to fruition since the peace accords did not define the remedy of restitution sufficiency in the first place (Williams, 2007:43).

Property restitutions have similarly remained an unresolved and heavily politicized issue in the Palestine-Israel conflict. In 1948, about 750,000

refugees were displaced from their land. (Hurwitz, Studdard and Williams, 2005:11). The ongoing nature of the conflict, the polarization of the issue inside and outside Israel, and the influence of international actors (particularly the United States), have all been faulted for preventing the restitution of Palestinian properties (Hurwitz, Studdard and Williams, 2005:11; Fischbach, 2002:36). The UN is faulted for buckling under political pressure and in fact abandoning efforts at repatriation and focusing instead on compensation (Fischbach, 2002:36). Some commentators note that while most of the long-displaced Palestinian refugees “would probably not opt for return... they are likely to reject a peace settlement that does not uphold, at least in principle, their right of individual choice in the matter” (Hurwitz, Studdard and Williams, 2005:11).

The above cases reflect that while property reparations are understood to have an instrumental role in post-conflict recovery of a nation and people, they are often difficult to execute, or even falsely touted and misused. The phase of the conflict in question; the political power of the community in question; the international involvement and interest; and the sheer political will of those in power, all determine the realistic scope of property reparations leading to restoration and transformation of societies. A case-by-case assessment is thus essential (Hurwitz, Studdard and Williams, 2005:15). “National and international actors should recognize the complexity inherent... [a]t the very minimum, specific HLP [Housing, Land and Property] activities should be incorporated into wider development and peace building strategies” (Hurwitz, Studdard and Williams, 2005:15). The international principles are based on the universal truth that displacement is wrong and painful, but there is no silver-bullet solution to correct for such pain; any successful solution must be acceptable and equitable within the larger context of the relevant conflict.

An Unsettled People

Who are the Kashmiri Pandit Migrants?

Kashmiri Pandits are the Hindus from Kashmir, who constitute a unique and distinct religious and cultural minority in Kashmir. The facts surrounding their origins in Kashmir are unknown, but according to legendary claims (Sender, 1988:2) they are the “off-springs of *Rishis* [holy men] and belong to the highest order of *Brahmins* [the highest caste in the Hindu caste system] ... highly educated and almost hundred percent literate” (Gadoo, 2001:32). Kashmiri Pandits practice their own unique form of Hinduism (Gadoo, 2001:31-32). They are traditionally disinclined to trade, “we only worship Saraswati (the goddess of wisdom), not Lakshmi (the goddess of

wealth)" (Sender, 1988:xxi). This highly literate community had for long served in high-level administrative posts in Kashmir (Sender, 1988:31).

After the partition of India and Pakistan in 1947, a percentage of the Kashmiri Pandit population migrated to the plains. Some Pandits allege that Kashmir became a Muslim state and the Pandit population dwindled in Kashmir from 15 percent in 1947 to five percent in 1981 (Gadoo, 2001:38). Sender, who researched Pandit history and culture, noticed that Pandits were concerned about their economic and occupational futures, as governmental positions in India became reserved for the lower castes, to the disadvantage of the high-caste Pandits (Sender, 1988: xx). Sender noted an "acute insecurity" in the Pandit community—their minority status always made them feel vulnerable (Sender, 1988:xvi). This is exemplified in how present-day Pandit commentators view their community: "the present plight of the Kashmiri Pandits is the end product of what our community has been facing for the past six and a half centuries" (Gadoo, 2001:217).

Most of Kashmiri Pandits (as detailed in the following section), from all socio-economic strata, migrated from the Valley in 1989-1990 but the rural communities were worse affected. This observation was shared by several interviewees. Rekha Chowdhary, Professor of Political Science at the University of Jammu, who has researched Pandit migration, commented that the Pandit migrants who currently continue to live in IDP camps are from the rural areas, while "there are much better off Kashmiri Pandits who own houses in Jammu and elsewhere in the country." Inder Salim similarly explains, "the rural suffered most because they lost the economic system they lived in, they lost their land and trees, its foliage and orchard." The rural Pandits were also more hesitant to leave. "There was no economic reason for [the 1990] migration, it was due to political reasons. But certainly the land dependent people were the most reluctant to leave," explains Professor Chowdhary. However, Mr. Sanjay Tickoo, key convener of the Kashmiri Pandit Sangarsh Samiti (KPSS), the organization that continues to represent and study Pandit families who remain in the Valley, holds that the economic reasons did not dictate the decision to stay or migrate. "No one knows what made us and 600 plus families stay, while all others left. We are doing a survey of each and every remaining family...it's not the economic reasons...hundreds and thousands of people left with no money."

How Many Pandits Left the Valley?

There is a range of estimations for the number of Pandits that in fact migrated since 1989-1990, though there is an agreement that most migrations took place in a relatively short span of time within 1989-1990.

Pandits constituted about four percent of the Valley's population that was 95 percent Muslim; other minority groups in the Valley include Sikhs, Buddhists and Jains. The State of Jammu and Kashmir was not included in the Indian government's official 10-yearly census in either 1981 or 1991, which partially accounts for the confusion in estimating the absolute and relative population estimates for the Pandits (Nandy and Rao, n.d.).

Researcher Alexander Evans determined that there were 160,000 to 170,000 Pandits in the Valley in 1990 and less than 4,000 Pandits in the same Valley by 1991 (Evans, 2002:26-27). Thus, 95 percent of the Valley Pandits left in 1989-1990. Evans carefully compared census figures, Pandit growth rates, rumors and exaggerations, and explains that the alternate estimates of Pandit migrations in 1989-1990, often forwarded by Pandit advocacy groups, have been conflated by various calculation errors, for example, by including Pandits who in fact migrated between 1949 and 1989 (Evans, 2002:26).

Interviewees cited varying estimates. Professor K.N. Pandita, former Director of the Centre of Central Asian Studies, Kashmir University, and member of *Panun Kashmir* (a Pandit advocacy group) left the Valley in 1990 and estimates the number at 300,000. Mr. Zalpuri, whose family fled the Valley in 1990, believes "it could be anything between 300,000 to 600,000 people or more . . . no credible census data is available on us." Bansil Lal, whose family lived in the Valley till 1989, estimated that "99 percent of the Kashmiri Pandits who lived in the Valley left." Mr. Kaul, who had left the Valley many years before the 1989 turmoil, has conducted his own research by consulting government statistics: "I calculated a number of about 250,000. Add to that those who did not register with the government (like many of my relatives who fled after 1989)... another 50,000." Inder Salim said, "my guess is three to four lakh [300,000-400,000] or a little more, but less than five anyway." Taffazzul Hussain, a Kashmiri Muslim professor who has lived in the Valley his entire life, did not make estimations but observed from his personal experience that most Pandits residing in large towns and many Pandits from villages had migrated in 1989-1990. Sanjay Tickoo, who never migrated from the Valley, believes that "around 1.5-1.75 lakhs [150,000-175,000] people left [the] Valley, not more. If it was indeed three or five lakhs [300,000 or 500,000] then the registered voter records should have shown higher figures, too. Now, people who had left before, also add themselves as 'migrants.'"

Why did Pandits Leave?

While the claims of 'ethnic cleansing'—systematic targeting of Pandits with the intention to eradicate the community—made by many Kashmiri Pandit

advocacy groups are not substantiated, there is enough evidence that threats, hate speech and incidents of violence in 1989 created an environment of unrest and fear for all Kashmiris and particularly for the Pandits. Most Kashmiri Muslims supported the 1989 uprising by Muslim militants and the Pandits were asked to show solidarity in the face of some violent eruptions in the Valley. Whether this general environment or then specific instances of targeting of Pandits resulted in their eventual mass migration remains disputed.

Professor Pandita remembers the environment he fled in 1990 as follows:

On the night of January 19, 1990, at about 9 or 10 millions of Muslims poured out on the streets raising the slogan 'Pakistan Zindabad, Hindostan Murdabad!'² In minutes, the movement spread to the entire city of Srinagar ... jammed the traffic, spread chaos, cut telephone lines, assembled in groups of thousands, squatted on the road, lit campfires, spread out furnishing and squatted to block, and from each group a youth would stand up and deliver a speech exhorting people to follow Islam and its teachings, fight the infidel, enforce *sharia* law, and make Kashmir an Islamic state.

Mr. Zalpuri, whose family fled in 1990, remembers warnings from mosques, "urging Pandits to join the movement or leave the Valley or get annihilated."

On the other hand, Professor Hussain, who saw his Pandit neighbors leave and has maintained contact with the family and cared for their house ever since, maintains that while the general environment was one of lawlessness, there was no targeted threat against Pandits. Similarly, Jatendar Bakshi, a Pandit who continues to live in Kashmir, maintains that "there was no armed conflict but the processions were taken out in large numbers demanding *Azadi* [freedom]." Inder Salim remembers that "[i]n 1990 it was impossible to see things clearly in Kashmir. On the one hand, there was a total rebellion against the Indian Occupation in Kashmir. On the other hand, there were many players of the game than was required, so the whole uprising was doubtful, which obviously ruined the genuine desire for a just settlement of Kashmir issue." Mr. Salim is not satisfied with the current recounting of the events of 1989-1990, "I still guess that something else was going on behind the curtain, and still people don't know who it was and why it was. After all who gained by Pandit migration? Perhaps, the hidden

² Translates to: "May Pakistan Live Long, May India Die!"

masters behind the visible masters were keen to get this ugly work done by JKLF [Jammu and Kashmir Liberation Front]. No clear answer."

Secondary sources reveal a few accounts of Pandit families leaving immediately in the aftermath of the abductions and killings of family members or friends (Teng and Gadoo, 1996:115). There are also accounts of threats published in newspapers by militant groups; for example, the "Quit Notice to IAS men in Kashmir," in *The Telegraph* on 21 March 1990 demanded all officers in the Indian Administrative and Police Services leave: "We can no longer tolerate any Indian stooges or police informers here" (Asia Watch and Physicians for Human Rights, 1993:170-171).

Materials shared by S.T Hussain shed light on the conditions that sowed unease among the Pandits. One government record lists 300 Pandit deaths between April 1987 and December 1990 and 49 case studies of torture and death in 1990. The case studies document bodies being found with militant organizations' posters hung around their necks or insignias carved on their foreheads. Though the perpetrators are not clearly identified, these records help understand the legitimate fear felt by many Pandits

Mr. Tickoo believes the number of Hindu deaths during this time has been exaggerated by Pandit groups, without any substantiating evidence. He explains that 'selective killings' were targeting "businessmen, agriculturalists, and government officials." From his research, he asserts that there were 351 deaths during 1989-1990 and 152 after migration, "total of 500 is all we have records for...and who is now going to investigate more anyway, and how?"

Another debate in the story of Pandit migration is whether Pandits were in fact encouraged to leave by the Indian government itself. Some international observers report that the Pandit migration was partly government-assisted (Asia Watch and Physicians for Human Rights, 1993:168). These commentators view the migration as the calculated result of assurances to the Pandits by the Indian government, "who wanted a free hand to deal with the Kashmiri Muslim militants" (Evans, 2002:21). In 1990, then Governor of Jammu and Kashmir, Jagmohan, ordered continuation of government salaries for Pandit civil servants who migrate (Teng and Gadoo, 1996:93-94), and camp schools for migrant students (Gadoo, 2005:63-64). Professor Hussain stated that "this allow[ed] [Jagmohan] to brand the militants as religious extremists guilty of human rights violations... [and] unleash repressive measures on the Muslim population." Mr. Salim remarked that "On the one hand, the then Governor Mr. Jagmohan fuelled the fire by encouraging the Pandit migration, and on the other hand, it was the responsibility of the majority community to protect the minuscule minority."

Jagmohan and Pandit leaders have vehemently opposed these allegations, asserting that they are “sheer concoctions” that ignore the real reason for migration: the “blood chilling face of terrorism” (Jagmohan, 1991:483-484). They point to the press that reported the total breakdown of Kashmiri government machinery in 1989-1990. For example, on December 17, 1989, *The Hindustan Times* reported, “[T]here is not even a semblance of the Government in the Valley, particularly these days that the government has moved to Jammu, the Valley has been left free to the militants.”

Pandit interviewees reported no government visibility, much less help, as they left their homes. Mr. Bakshi said that common people helped the Pandits migrate. Mr. Zalpuri maintained that “[i]t was self help. On 31 January 1990, curfew was relaxed and we made our escape early. The only government assistance was that they did not pro-actively stop us.” Mr. Salim recounted that he “arranged transport from Bijbehara to Jammu. I had to pay double to a *taxiwalla* [taxi driver]”

It is unclear what different means of migration were employed by the Pandits, but many paid truck drivers for rides or then trudged on foot. Evans notes that this lack of evidence of transportation arrangements defies the theory of government-assisted mass migration (2002:22).

Though evidence of a government-orchestrated evacuation is missing, the mass migrations despite the low number of killings suggest some credence in the argument that Jagmohan’s assurances prompted Pandits, understandably frightened by the growing unrest, to migrate. Perhaps this evoked Ms. Mufti’s remark that Kashmiri Pandits had the opportunity to think of leaving, while Kashmiri Muslims did not.

Where did Pandits Go?

Most Pandits first fled to nearby Jammu and then, from there, depending on their socio-economic status, they either migrated to other parts of the country (or even abroad), took refuge with relatives, or went to refugee camps. More rural Pandits have settled in Jammu, while urbanites have moved to metropolitan cities (Koul, 2003). By one estimate, 60 percent of the migrants shifted to rented accommodations in Jammu and nearby townships; 15 percent were temporarily accommodated by their relatives; and the rest went to camps (Teng and Gadoo, 1996:91). One undated government record of the Relief Commissioner of the State of Jammu and Kashmir (provided by Mr. Bakshi) recorded a total of 23,567 people in 16 migrant camps in Jammu. Of these, more than half were Pandit government employees and their family members.

The Pandit families that remain in the Valley are sparsely distributed across the Valley, in rural and urban areas, according to Sanjay Tickoo and

KPSS's survey. "There are maybe seven areas with more than ten Pandit families...most areas haven't seen more than one or two Pandit families at once."

What Happened to Pandit Properties in the Valley?

Since the bulk of migrations took place quickly, amidst chaos and with the belief that this situation was temporary, most Pandits did not dispose off their properties before they left. According to the draft report of the Special Assistance Programme (SAP), many left their homes in the care of their trusted Muslim neighbors and friends.³ According to Mr. Zalpuri, "the vast majority of Pandits didn't get any chance to sell anything. Life and honor itself was at risk. But yes, lots of people including ourselves did sell in distress after a few years but only when we were approached by the middlemen/brokers." Professor Pandita says that many Pandits waited for a decade before they lost hope of return and sold their properties.

It is important to note that many interviewees' information about the fate of the properties they left behind in the Valley came only from second-hand sources in the Valley. Mr. Kaul's parents' home was disposed off under a distress sale in the 1990s and he said, "between 1989 and the date of sale, the property had been broken into, vandalized and occupied by somebody who was running a business on the premises." Mr. Zalpuri had heard that someone had illegally occupied their home and a middleman contacted the family in 1996-1997 to legalize the occupation. "We sold our property in distress as we weren't gaining anything." Mr. Lal had three large plots of land in the Valley. These were "usurped by some local Muslims. Forged papers of sale were made, and in collusion with Revenue officials, records were changed. Our numerous representations to the Jammu and Kashmir Government brought no results. Threats were conveyed to us by the usurpers." Professor Pandita who sold his house and land for "a paltry sum," says that his house "was destroyed gradually by stealing the doors and windows. They cut the trees, filled the well with garbage and thus forced me to sell the piece of land and the debris under distress."

However, Professor Hussain reported that the "vast majority of migrant property remains deserted and unoccupied. Their lands too are unutilized." Professor Pandita conceded that, "[i]t is true that many properties were not forcibly occupied but as the stay of the IDPs prolonged in the camps in Jammu and other places, and no hope of their resettlement was visible and no intention on the part of the state or the Union government was

³ This in-progress report by the Department of Political Science, University of Jammu was provided to the author by Professor Rekha Chowdary.

demonstrated, they were left with a deep sense of loss and destitution.” He explains that this desperation caused Pandits to sell their properties.

Again, it is to be noted that all the above Pandit interviewees are educated, upper-class persons who were land- and home-owners. It is quite possible that larger properties were more prominent targets for vandalism and usurpation, and that these accounts are not representative.

Researchers at the University of Jammu report that most migrants continue to have economic interests in the Valley in the form of property. Only some migrants have sold their properties. The SAP report noted that “[w]hile some complain that their property has been forcibly occupied by the majority community...others proclaim that their property has been destroyed.”).

Among the materials provided by S.T Hussain, one government report details 493 incidents of property damage between 1990 and 1993, of which about 430 are damage and destruction of minority-owned houses. Eighty-five shops owned by the minority community were also damaged, according to eight separate reports during this time period

As documented in the SAP report, in 1999, a newspaper reported that the state Government itself indicated that about 635 houses and 2,000 kanals⁴ of migrant land were under illegal occupation. Similarly, the state government informed the National Human Rights Commission, “total number of structures belonging to the migrants is 16,979 out of which 5,870 structures have been gutted or damaged”. Reports of nefarious property-grabbing in the Valley continue to make news in more recent times. In January, 2007 police arrested four individuals for forging power of attorneys in the name of Pandit migrants and selling migrants’ properties for hundreds of thousands of rupees (Pargal, 2007).

What Provisions were Made for the Pandit Migrants?

Camps around Jammu provided refuge for migrants with few means and no source of support. Camp life is cramped, difficult and lacking in many basic necessities (Bhardwaj, 1994). Ms. Mufti explained that while the state government is making efforts to better the camps, it does not want to create permanent accommodations since it hopes camp dwellers will return to their original Valley homes.

Families that registered as “migrants” receive monetary compensation and food rations from the government. As noted previously, before Pandits

⁴ A unit of measurement employed in South Asia, 1 “kanal” is roughly equal to 0.125 acres (510 m²).

migrated, Governor Jagmohan promised continued salaries for civil servants. This promise continues to deliver even today. The SAP report cites accounts which indicate that 70-90 percent of migrants in camps have remained unemployed since 1989-1990 and support their families off of the continued monthly compensations, salaries and pensions (SAP Report, 2007). Provisions have also been made in different parts of the country to accommodate displaced Pandit students (Gadoo, 2005).

Mr. Salim, who first migrated to Jammu and then settled in Delhi, in fact received government compensation for destroyed property. "I received Rs.50,000 for my four-storey home, which was completely gutted by fire after a couple of years [post his migration]." He received an official government notification informing him that he was entitled "to compensation of maximum of Rs. one lakh [100,000]. So my cousin, brother and [I] were granted Rs.50000 each."

Specifically addressing the issue of migrant properties that have been destroyed or unlawfully occupied, the government passed the Kashmir Immovable Property Act in 1997. The four stated objectives of the Act are to preserve migrant properties; regulate the procedure for alienation of these properties; safe-guard the interests of migrant owners; and prevent distress sales.

The Act prohibits alienation of property "except under such conditions as may be prescribed and with previous permission of the Revenue Minister, or such officer as may be authorized by him." It also clearly defines the process for migrants to apply for permission for alienation. Once a migrant submits an application, the government must read it, inquire whether it is an attempted distress sale, and decide the matter within fifteen days. Even on first blush, this timeline seems quite challenging for any bureaucratic system, much more so for one dealing with a delicate issue in a volatile area. The Act further authorizes the use of such force as necessary to evict any unauthorized occupant of migrant properties. Finally, on the matter of compensation, the Act provides that any unauthorized occupant shall pay the lawful migrant owner compensation for the duration of the unauthorized occupation, provided this compensation is no less than double the applicable market rent/rate.

Despite its promising language, interviewees viewed this Act as impotent. Professor Hussain did not know of any Pandit who had attempted to employ this Act. He thinks the Act is not utilized because "a precondition for sale of migrant property is a declaration by the migrant made in person before a designated authority that he is not making the sale under duress." However, Mr. Bakshi explained a loophole in the Act allows the actual owner to register a power of attorney in a court of law, and thus delegate

authority for sale. He believes the Act's failure is actually due to the "cumbersome and very lengthy" procedure. One interviewee had in fact attempted to employ this Act to vindicate his property rights. Mr. Lal owned three pieces of land in the Valley and has applied to the state government under this Act "dozens of times" but laments that there has been "no outcome." The number of migrants like Mr. Lal who have employed the Act could not be ascertained. The state government website provides an email address for migrants to report unauthorized occupations, but this address is dysfunctional. Attempts to contact the Divisional Commissioner's office were unsuccessful, though this also reflects the limitations of researching this region from afar.

The 'Aggressor' Community

What further complicates Pandit reparations is the fact that the Kashmiri Muslim community, which allegedly usurped some of the Pandit properties, has itself suffered grave human rights violations since 1989-1990, if not longer. Since this article claims that the Pandit property issue should not be divorced from the realities of the Valley, this section considers the tribulations of the Valley's majority community.

The militant movement, to which the Pandit commentators attribute their current situation, was fueled by incidents that had led Kashmiri Muslims to feel discriminated against by the ruling Indian government. For example, in 1987, there was popular disenchantment with the electoral system; the elections were widely believed to have been rigged (Bose, 2005: 96). Peaceful demonstrations began to take place. The citizenry's distrust of the government grew with incidents such as police firing on peaceful demonstrators. In the 1989 parliamentary elections, the turnout of voters in the Valley was a mere four percent. Popular protests grew rapidly as thousands began supporting the movement for Kashmiri sovereignty. In one demonstration in February 1990, 400,000 Kashmiris—almost half the population of Srinagar—marched through the city. They entered the office of the United Nations Military Observer Group to hand over petitions demanding independence (Goldston, Gossman and Asia Watch Committee, 1991:14).

As disgruntlement simmered, some young Kashmiri Muslim men went across the border to Pakistan, gained combat training and formed militant groups. Militant groups began the systematic killing of various government officials and those believed to be Indian government spies and collaborators. It is worth noting that three-fourth of the victims of such targeted killings were in fact Muslims, the rest Pandits (Bose, 2005:108). The Center imposed

Article 356 of the Indian constitution, which allows suspension of state government by the federal government in times of civil disorder. The center sent Governor Jagmohan to the Valley to handle the crisis.

Though the Pandit interviewees legitimately emphasized the disappearance of local police from the Valley as unrest brewed in 1989-1990, they did not elaborate on how other government forces, such as the military and paramilitary troops, responded to the Kashmiri Muslim population. On 5 July 1990, the government declared the Armed Forces Special Powers Act, which allows the central government to declare any area as "disturbed area," in which the army is allowed, among other things, to shoot on suspicion (Goldston, Gossman and Asia Watch Committee, 1991:28). In the first weeks of 1990, government forces arrested hundreds of young Kashmiri Muslim men and opened fire on unarmed demonstrators, killing scores of civilians (Goldston, Gossman and Asia Watch Committee, 1991:2). In one such incident eyewitnesses reported government forces repeatedly shooting people who lay on the ground, saying, "So you want Pakistan, you want independence? Go have independence" (Goldston, Gossman and Asia Watch Committee, 1991:27).

Asia Watch conducted an independent investigation in Kashmir and prepared a report detailing 200 extra-judicial killings by government forces in 1990 alone (1991:4). They interviewed several eye witnesses and survivors. Jabbar, M., a farmer in his 80s, described the events on 1 October 1992 (Asia Watch and Physicians for Human Rights, 1993:76-77):

It happened immediately after noon. I was in my courtyard with my sons, Akbar, 40, and Mahdi, 35 and two helpers, Hamid and Ramzan, who were grading and packing apples. We could hear firing from the soldiers as they entered the village. There were about 40 or 50 soldiers. I ran to my house. The soldiers dragged about 20 people out of their homes, both men and women, and beat them. They took my sons and the two helpers to the stack of rice in the compound next door. I followed them; they paid no attention to me. I saw them shoot my sons and the two workers several times.

Authorities generally claimed that the deaths occurred during "cross fire" (Goldston, Gossman and Asia Watch Committee, 1991:28). Between 1990-1993 lawyers reported they had filed 15,000 petitions calling on state authorities to reveal the whereabouts of Muslim detainees and the charges against them, but received no response (Asia Watch and Physicians for Human Rights, 1993:88-89). Also, international human rights groups have documented widespread use of rape and other forms of sexual violence against Kashmiri Muslim women. This violence was often perpetrated with the explicit purpose of humiliating the population, such as by forcing men

to witness the rapes of their female family members (Goldston, Gossman and Asia Watch Committee, 1991). While records and statistics for such gender violence, torture and unlawful arrests are unavailable, by conservative estimates, 60,000 people have died and 8,000 are 'missing' (almost all of these being Kashmiri Muslims) since the uprising in 1989-1990 (Project Ploughshares, 2008; Internal Displacement Monitoring Center, 2007).

There is little information about Kashmiri Muslims who migrated. Though interviewees were not familiar with any cases of Muslim migration, statistics show small percentages of Muslim and Sikh migrations. Mufti attributed the small number of Muslim migrations to the "minority syndrome of Kashmiri Muslims outside the Valley." She believes that larger India was willing to accept Pandit victims and make provisions for their resettlement, while the Kashmiri Muslims were not welcome since they were perceived as "Pakistan supporters" or even terrorists and enemies. Mr. Salim commented that "both Pandits and Muslims suffered. I believe the social fabric of Kashmir was devastated by the violence as never before. . . all the [K]ashmiris lost that fabric which was [their] history and identity, and restoration of that fabric looks now an impossibility. It was like music, which is no more."

The Return of Pandits to the Valley

The two important questions in evaluating the possibility of Pandit return to the Valley today are whether there still exist security concerns for the minority community, and whether the Pandit migrants actually want to return to the Valley. There are no clear answers to these questions thus far, and the analysis is further complicated by the competing interests of various actors who have a political stake in the Kashmir conflict.

Security in the Valley

There is no doubt that violent incidents have never completely ceased in the Kashmir Valley since 1989. The wide scale uprising took place from 1989 to 1995 (Bose, 2005:107). However, with the passage of time, amidst heightened Indian militarization, Kashmiri Muslims began becoming disillusioned, and realized that "ranks of freedom fighters contained politically shallow people, opportunists, and even criminals" (Bose, 2005:127). In 1995-1996, some guerilla 'renegades' joined the ranks of Indian auxiliary forces (Bose, 2005:133). The gun culture of the security forces, militants and renegades resulted in continued destabilization and civil disorder in Kashmir. Kashmiri Muslims became willing to partake in Indian elections in the hope of restoration of some form of law and order in exchange for the

original dream of independence (Bose, 2005:138). Between 1996 and 1998 militant activities diminished, but Indian forces continued to hunt and kill suspected militants, and human rights abuses persisted (Bose, 2005:136). In 1999, the insurgency renewed "with radical Islamist ideological color and the ascendancy of Pakistan-based militants using suicide-squad tactics against the Indian forces" (Bose, 2005:107). Police, army camps and government installations have been attacked in this fashion in the Kashmir Valley since 1999 (Bose, 2005:141). Most recent escalation in violence came in 2006 when tourists were made soft targets for grenade-attacks. However, other than this 2006 aberration, the violence of the early 1990s has constantly been on the decline. Pandits have trickled back into Srinagar, and many have begun visiting the Valley (Bose, 2005:123). By mid-2002, 15,000 Pandits had participated in the local 'Khir Bhawani' festival. However, the militant movement has "never been able to live down the taint of Pandit exodus in the first months of the uprising" (Bose, 2005:124). In the same vein, Professor Chowdhary at University of Jammu comments that "except for the well-known incidents that took place, of massacres, there is no threat to Pandits who are in the Valley. Generally, they feel secure and have very solid relations with the Muslims."

Reports from recent years about the safe return of tens of thousands of Pandits for religious festivals such as the 'Kheer Bhavani' are definite and verified. Ms. Mufti estimated that 50,000 to 60,000 Pandits have been returning to the Valley for several days each year to celebrate their festivals. In some districts Muslims provide accommodations to the Hindu pilgrims. This exhibits a certain level of security in the area and the Pandits' own confidence in this security.

According to Ms. Mufti, "the militants are slowly realizing the futility of [the] gun and the situation in the Valley has much improved." She says this is evidenced in the growing percentage of voters in elections in the Valley. While in 1995 less than two percent voted, in early 2000 the percentage was close to 20 percent and further went up to 77-79 percent in the 2006 by-elections. However, she insisted that for "democratization [to] come into force," the government must withdraw troops who have been in the Valley since 1989. She said that the army bunkers are unsightly and psychologically destructive for a population transitioning to democracy.

Further, as discussed previously, not all Pandits left the Valley in 1989-1990 and about 600 families continue to live in the Valley today. Mr. Tickoo remarked that the "611 families that remain in the Valley are not surrounded by any security forces everyday!" He, however, also believes that "of the Pandits, whosoever remains in the Valley, will ultimately leave." He argues that this is not due to the security conditions, but due to the lack of economic opportunities in the Valley in general and the lack of social

interactions for Pandits in particular. "We have our own culture and we are losing this heritage and culture. We are seeing unemployed youth, and no weddings and so no births." He notices much migration even after 1989-1990, where "young people leave and then their families also follow them."

Today, the larger Kashmiri Muslim population is reported to desire the return of the Pandits, as are many Muslim leaders and some militant groups. A news article in 2007 reported that "85 percent of Kashmiri Muslims want Kashmiri Pandits to return back to valley" (News Agency of Kashmir, 2007). Muslim leaders like Mirwaiz Umar Farooq of the All Parties Hurriyat Conference and Shabir Shah, a leading pro-independence Kashmiri activist, have stated that the future of Kashmir includes the presence of the Pandits (Evans, 2002:33). Similarly, Ms. Mufti stated, "Kashmiri Pandits are a part and parcel of Kashmir."

Migrants' Willingness to Return

Many commentators, including all interviewees, believe that the Pandit community does not display a strong will to return to the Kashmir Valley. Urban Pandits have long since moved and settled in (what seem in comparison as) greener pastures. And while many rural migrants in camps show willingness to return and reclaim their homes (M. Kaul, 2001), their voices are neither strong nor loud, and often heard only through the filter of Pandit advocacy groups.

Pandit commentator K.L. Chowdhury in fact claims that majority of the Pandit community is not ready for the "Herculean task" of returning to the Valley for two reasons: first, a kind of complacency has settled in the migrant Pandit psyche, since they have accepted their fate and have become used to wages without work; second, the migrant community is happy with the windfall their children have received in admissions to professional colleges in other states (2001:173).

Sanjay Tickoo said that "city people will not come back. Whosoever will come back is from the village side." He believes that Pandit leaders themselves do not wish to return, because they are now used to a different, more comfortable lifestyle. Similarly, Professor Chowdhary commented that "[b]asically there is no consensus among the organizations and the community, making it difficult for anyone to take a decision on one's own. [T]here is community pressure ... [and] there is no[t] economic incentive for them to go back ... there are better opportunities elsewhere in the country."

The SAP report by Jammu University study found that most young Pandits, who were born and raised outside the Valley do not desire return, but those in their thirties, who remember and know the Valley, would still like to return. Inder Salim is optimistic of Pandit return to the Valley some

day, remembering things from his childhood that "are done only in Kashmir, and I don't have any alternative to that, so they are with me till death." But he also believes that "with time, everything changes, the people change, the place changes, everything changes, even nostalgia."

The Pandit organization *Panun Kashmir* conditions return on the creation of a separate Pandit homeland in the Kashmir Valley (2004). Mr. Bakshi does not agree with the *Panun Kashmir* ideology. His organization, *Action Committee for Return of Migrants*, believes that return "is possible only with the help and goodwill of the majority community (Muslims) of the valley." The Committee has successfully organized talks between militants and Pandits and Mr. Bakshi says that despite hostile criticism by forces such as *Panun Kashmir*, the organization is seeing growing support.

More than a thousand Pandits volunteered to return when the Indian government asked for volunteers as it planned creation of "cluster communities" for Pandits in Kashmir. These communities were to be funded by the central government and received much press and attention in 2005. Regarding the stalling of these plans, Ms. Mufti explained that the "2006 tourist attacks were a setback."

A crucial problem in evaluating the migrant Pandit population's willingness to return is the scarcity of the voices of rural and poorer Pandits. The urban Pandit elite have become the community's spokespeople. Mr. Kaul explains that the poorest camp-dwelling migrants "have little political clout. Whatever little influence Kashmiri Hindus have, whether in the State or at the Center, is wielded by the urban Kashmiri Hindus, supposedly on behalf of the rural folks in the camps." While Pandit organizations have been successful in demanding attention both nationally and internationally, organizing rallies and protest demonstrations, Kaul explains that "camp residents . . . add their weight by their numbers and little else. The decision making stays with the urban folks even though it is mostly the rural-based camp residents that have maximum at stake." Accepting Pandit organizations as the authority on the community's requirements and the situation at hand is thus likely to mislead.

Who Loses if the Pandits Return?

The politically charged issue of Pandit migration has created many stakeholders across the spectrum, whose power is derived from Pandits' displacement. These stakeholders will likely lose personal prestige, and some even their occupations, should Pandits return peacefully.

First, certain Muslim militants, who communalized the conflict and declared Pandits as 'Indian government agents' and 'traitors,' will resist Pandit return. However, such groups likely do not enjoy popular support

of the larger Kashmiri Muslim population that favored independence but did not equate anti-India with anti-Hindu sentiments.

Next, Pandit organizations like *Panun Kashmir* have been active ever since the exodus in 1990 and have their own political vision of Pandit return. Though *Panun Kashmir* now has splintered into several factions, all share the demand for a separate homeland in the Valley, reserved for Pandits only. This demand exemplifies their preference for ethnic segregation. Some Pandit politics is marked by “racist communalism” (Evans, 2002:31) and many commentators distrust all Muslims. In a recent article, Professor Pandita declared that “it is a big fallacy to think that Kashmir had a tolerant Islam. It was never so.” When in April 2008 Indian Prime Minister Manmohan Singh proposed a housing project, jobs, and a financial assistance packet of 750,000 Rupees for Pandit migrant families who desired to return to the Valley (Mushtaq, 2008), Pandit commentators labeled this a political stunt and also faulted Singh’s Congress party for having a “Muslim first” policy, which was “rewarding Jihadis”⁵ and not assisting Pandits in achieving their goals. Whether key Pandit leaders will come to the table to discuss peaceful and holistic return to a majority Muslim area is thus questionable.

Third, certain forces are more vested in preventing Pandit return than others. The Rashtriya Swayamsevak Sangh (RSS), a right-wing Hindu fundamentalist organization provided relief to migrating Pandits in 1990. (Evans, 2002:31) The same RSS assisted Pandit migrants in later years, for example by helping students gain admissions to colleges in the state of Maharashtra. Though such help might be lauded, the RSS is also known for its vehement anti-Muslim propaganda. In 1990, the RSS published exaggerated claims of persecution of Pandits in the Valley, in order to increase the existing fear and distrust of Muslims (Evans, 2002:23). The organization might thus be guilty of capitalizing on Pandit grief in order to portray the entire Muslim community culpable.

Finally, the Indian Government has been battling with Pakistan over Kashmir since 1947, and arguably the Pandit displacement is politically advantageous to its anti-Pakistan propaganda. Pandits represent the persecution of Hindus in Kashmir, and this can be used to counter-balance the reports of India’s persecution of Muslims in the Valley. In the words of a prominent *Panun Kashmir* member, the fate of the Pandits has provided Indian ammunition “against the Pakistani propaganda across Europe and USA of a ‘Muslim Kashmir’ being ‘destroyed and exploited’ by Hindu India” (Pandit, T.N., 2005). However, the government’s official stance is that it favors return. But any real effort towards the peaceful return of

⁵ Here, *jihad* is used in a derogatory sense of a violent crusade by Muslims.

Pandits requires India to first drastically change its policies in the region. India has for too long attributed the violence in Kashmir to cross-border terrorists, without holding itself accountable for shaping the conflict, its radicalization and trans-nationalization (Bose, 2005:161-162). The Indian government will thus have to take concrete steps to change the situation in Kashmir, develop stability and ease Pandit return.

Property Reparations for the Migrant Pandits

Reparations for loss of Pandit property would be a step towards giving the Pandit migrants their due, however, any reparation plan must take into account the unique realities of the Pandit migration and the Kashmir conflict. This paper suggests that compensation is due if Pandits cannot return due to a credible security threat, despite their willingness to do so. However, if the security threats are more a construction of political propaganda and return is possible but Pandits are nevertheless unwilling to attempt it, then compensation should not be paid. Assessing the credibility of the security situation necessitates detailed surveys and record-keeping. This requires political will by the Indian government and should ideally be undertaken in the purview of international actors, who are not influenced by regional and communal politics. Finally, secondary occupants, Kashmiris in the Valley who are now dependent on migrant properties, should not be displaced without being provided some viable alternative.

Reparations for All or Reparations Conditioned on Return

The first question while thinking of property reparation for this displaced community is whether all Pandit migrants should be provided compensation or restitution for having fled their homes in the Valley or whether reparations should be made only to those who are now willing to return to the Valley. Many factors complicate the 'Reparations for All' scheme. The entire Kashmiri population has suffered from the internal conflict, and a scheme that provides compensation for having fled during the turbulent times, would be seen as preferring one community over another—it may be argued that Pandits were at least able to leave, and many continue to draw government salaries and compensation, while Kashmiri Muslims in the Valley have had to, and continue to, endure insecure conditions. It is at least contestable whether Pandits were forced to leave or whether they left out of fear coupled with implicit government assurances of their safe return. It is further uncertain how the majority migrant Pandit community feels about return and it is very likely that the opinion of the rural and poorer migrants

in the camps is much different from the urban Pandits who have successfully created second lives elsewhere.

Given the above considerations, a scheme that conditions reparation on return is more favorable. In other migration contexts, conditioning reparations on return may be in violation of migrants' rights to life and liberty. For example, asking a migrant to return to a region where his or her community remains in imminent threat, would be unacceptable. However, I propose that the Pandit case is different since safe and successful return might in fact be possible and deserves to be seriously evaluated.

Testing Security

Though the incidents of the early 1990s, which eventually caused widescale suffering for all communities and fear for the Pandit community, are recalled as evidence of lack of security in Pandit return, no new evidence has been collected evaluating the present-day security situation with respect to Pandits' return. This article thus recommends a 'test enclave' in the Valley to ascertain the current security condition and pave the way for Pandit return and collective healing.

The real test of safe return is not whether Pandits can be housed separately in new, Pandit-only communities, but rather whether they can re-integrate into the communities they left. When the government called for volunteers for their 'cluster community' program, hundreds of Pandits volunteered. But as Sanjay Tickoo commented, "clusters are like prisons. They separate people. Then how do you expect neighbors to come to your aid when you need them?" Representing the *Kashmiri Pandit Sangarsh Samiti*, an on-the-ground Pandit organization, he holds that any return program to be successful should be inclusive, i.e., "whatever the Pandit community gets as benefit, the other community should also get."

A region in the Valley must be identified as the test enclave, ideally one which saw large-scale Pandit migration from a previously mixed community, such as the small area around Habba Kadal, in downtown Srinagar. Habba Kadal had had a significant Pandit population. "It is always remembered as a Pandit dominated area in the Valley," said Tickoo. "If the return takes place in a very low-profiled manner, there may not be much problem," said Professor Chowdhary when presented with this idea. While Habba Kadal is in the high-profile urban area of Srinagar, it has also previously been an integrated community. Further, it is helpful that some Pandits currently reside here. The sudden entry of Pandit families to an all-Muslim area, after twenty years of complete absence, would be more uncomfortable. Further, being an urban area arguably provides more exposure and jobs, even though employment will remain a complicating factor for any

return and reintegration effort, given the economic woes of the Kashmir Valley. Since it is a prominent location in downtown Srinagar, Habba Kadal will also have more visibility, more press coverage, and thus perhaps more local and international scrutiny to keep the pilot program honest.

Participants for the pilot program would include both incoming Pandits and currently residing Muslims and other minorities. The situation and wishes of all participants must be given due regard. The Pandit participants' claims to properties in the Valley should be duly noted and verified to the extent possible. Though most accounts show that common Kashmiri Muslims did not want their Pandit friends and neighbors to leave in 1989-1990, a survey would help assess the current willingness of the Muslim participants to welcome the Pandits back to the Valley. Though Pandit return should not be prevented simply if the local population is unwilling, this factor should be considered given that inter-communal tensions have been part of the problem in the past. Such measures are important to counter the influence of political actors such as right-wing Hindu organizations or radical Muslim organizations that preach the impossibility of Hindu-Muslim co-existence in the Valley. As Pandits reclaim lands and homes, or are allotted new homes as compensation by the government, the local community must support and respect these changes, without feeling threatened. All such property decisions should be made public to increase transparency in the region and mitigate any allegations of communal bias. To this end, international agencies would be very helpful in monitoring the adjudication of property matters.

The Indian government will have to deploy special police to protect against agents who are vested in preventing a safe Pandit return. A two-kilometer radius could be identified around Habba Kadal, and security systems put in place to ensure that those who volunteer to participate in the test enclave do not become easy targets of any faction. However, given the distrust of Indian police and forces in the Valley due to the widely reported human rights abuses, careful checks and balances will have to be put in place to ensure that the police do not play favorites and protect one community over the other. International monitoring is likely to enable creating an environment of trust and security.

Since the political situation in the Valley is volatile and involves many fighting factions, the enclave will have to be watched carefully for several months. Should a security threat arise, a plan must be in place to assist the police already assigned to the area. This plan cannot be merely one of safely removing Pandits from the enclave. It must also protect the other participating communities, who were willing to accept the challenges of reintegration and welcoming Pandits back home. Those who volunteer for this pilot program would undeniably be undertaking a risk, without which the

security situation cannot be practically ascertained. In exchange for their courage, a very strong and reliable back-up or contingency plan would be necessary. The testing process is not worth staking more innocent civilian lives.

Problems in Calculating Reparations Fairly

The logistics of providing reparations will by no means be uncomplicated. One preliminary question is whether compensation/restitution should be limited only to those who fled in 1989-1990. Urban Kashmiris had left the Valley in previous years, in search for better opportunities in the plains or even abroad (M. Kaul, 2001). The Kashmir Valley has been gorged by violence and providing compensation to those who left much before the conflict erupted but still own lands in the Valley should be a lower priority than compensating those who lived in the Valley until the mass exodus in 1989-1990.

Many Pandits have now sold their properties, despite the Migrant Immovable Property Act of 1997, but claim these were “distress sales” from which they received a much lower value than was due. The difficulty here is distinguishing distress sales from abandonment followed by sale. No account suggests that Pandits were forced to sell properties before they fled or as a condition for fleeing to protect their lives. “I don’t think Pandits sold their properties under duress,” remarked Mr. Salim. However, in some cases, the Pandit properties were occupied illegally and in later years the occupants contacted the Pandits owners and asked to buy the property to gain legal title. While such a sale, bringing a Pandit owner a fraction even of the initial cost-price, is identified by some of the interviewees as ‘distress sale,’ it is also reasonably plausible that the property values in the area with extended internal conflict might in fact have depreciated to this great extent. For Pandits who left their properties, made second lives, and then sold their properties (though for much less than they hoped), the question then will be whether they received a fair value for the property, given the present day market value.

If the Pandit’s property no longer exists, and he or she has received no compensation for it either, a fixed aid packet might be appropriate. This solution might seem most practical from the government’s perspective of administrative cost-effectiveness. However, it will also over-compensate some while under-compensating others. To ensure that aid goes to the neediest, perhaps the current income and situation of the migrant should be considered. But then again, the rich will complain of being punished for being rich. A case-by-case analysis would solve this problem, but will be resource-intensive. Nonetheless, the advantage of this last approach, be-

sides providing fairer compensation, is that more details of every case will be revealed, helping to lift some of the fog around crucial facts of the Pandit migration.

If the property still exists, a more classic restitution scenario would apply, that is, the property should be returned to the rightful owner. However, this involves problems of proof of ownership and in some cases much adjudication. In cases where illegal occupants are removed, the rights of secondary occupants come into play. Questions arise as to whether the authorities will expediently provide such secondary occupants with some sort of relief (ideally transitional camp housing). Shrouded by bureaucratic considerations, this issue is likely to further complicate the restitutions, but as discussed earlier, it must not become an excuse for stalling the process.

Conclusion

Providing reparations for past wrongs and rebuilding communities necessarily involves time, effort, and political will. Property signifies security and as a tangible good that can be returned or compensated for, it has the potential to become the means of restoration and healing. While understudied, the case of Kashmiri Pandit properties adds yet another unique context in which the normative framework for property reparations is challenged, must be adapted, and modified appropriately. This article suggests that the particular situation of the Kashmir Valley in fact necessitates reparations be conditioned on the return of migrants. While the condition of return has otherwise been resisted in other property reparation schemes, this article has argued that imposing such a condition will make Pandit reparations both possible as well as of lasting positive consequence for the entire Kashmir Valley.

Like other forms of reparation, property reparations cannot and do not take place in a vacuum. As illustrated by the property reparation schemes and the debates that surround them in Bosnia and Herzegovina, the Czech Republic, South Africa, Palestine and Guatemala, property reparations are contentious, may become inequitable, and even result in further entrenching communal discord. In the Pandit situation, it is thus necessary to evaluate the overall situation of the Kashmir Valley.

In the last twenty years, the entire Kashmir Valley has suffered from protracted conflict that has caused loss of life, liberty and property. While the Hindu-Muslim animosity has been overplayed by various political factions, the conflict does have considerable communal repercussions: the local Kashmiri Muslim population views Indian control as an occupation of minorities by the majority, Indian Hindus. Members of the Indian majority religion were a small minority in the Kashmir Valley in 1989-1990, and their

rights must be protected. However, if Pandits are compensated while they live elsewhere, or then are reinserted into the Kashmir Valley with special provisions and protections that are not available to the Muslim population, the disgruntlement and discontent of the long-suffering Muslim population will only intensify.

Setting up a 'test enclave' in the Valley is thus one approach to analyze both the current security situation as well as begin a gradual process of re-integration that will benefit all populations in the Valley. Given the long and bloody Kashmir conflict, the proposal for this pilot program to test security and a comprehensive approach to property reparations might seem idealistic. However, even the most successful of property reparations schemes, the Bosnian case, is testament to the fact that the process of property reparations and return is by no means simple. Second, as is suggested by interviewees who currently live in the Valley or are familiar with its present situation, such a pilot project would help dispel the myth that the conflict is simply aggression by one religious community against its neighbors. Third, by involving the international community, the pilot will bring attention to the plight of all Kashmiris. Fourth, the Indian government will be displaying a holistic approach by undertaking such a program, one that fosters trust in the State's intentions to better the lives of all those suffering. Not in the least because the roots of the Kashmir conflict are in disgruntlement over treatment as 'second class citizens,' the reparations approach has to be holistic and equitable from the very start; there are no short-cuts.

Before any innovative approach can be applied to relocate or compensate Pandits, the entire contextual situation of the Valley must be evaluated. The case of Kashmiri property reparations is complicated by the ongoing nature of the conflict and the fact that Kashmir remains one of the most militarized regions of the world. Pandit return and reparations cannot take place in a vacuum, and the Indian government will have to show a commitment to improve the conditions for all people in the Valley. If the government makes a good-faith effort at property reparations, persists in these efforts beyond one election cycle, and allows international monitors who can help maintain neutrality, the Pandit population that has been rendered homeless and helpless will have a second chance in the Valley. Its pain will finally cease to be a pawn in the complex power play that is the Kashmir conflict.

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